

Joseph M. Alioto SBN 42680
Joseph M. Alioto, Jr. SBN 215544
ALIOTO LAW FIRM
555 California Street
31st Floor
San Francisco, CA 94104
Telephone: (415) 434-8900
Facsimile: (415) 434-9200

John H. Boone SBN 44876
LAW OFFICES OF JOHN H. BOONE
555 California Street
31st Floor
San Francisco, CA 94104
Telephone: (415) 434-1133
Facsimile: (415) 434-9200

Richard D. Rosenberg SBN 67336
ROSENBERG LAW FIRM
456 Montgomery Street
17th Floor
San Francisco, CA 94104
Telephone: (415) 675-7100
Facsimile: (415) 421-6651

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

TRUCK-RAIL HANDLING, INC., and
QUALITY TRANSPORT, INC.

Plaintiffs,

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

COURT FILE NO. C-02-2825-JSW

**UNCONTESTED MISCELLANEOUS
REQUEST TO CONFORM RECORD and
~~PROPOSED~~ ORDER**

Plaintiffs in the above-captioned action submit this Uncontested Miscellaneous Request to Conform Record and [Proposed] Order. In support thereof, Plaintiffs state as follows:

1 1. On August 9, 2005 Plaintiffs filed their Notice of Appeal from Judgment entered
2 July 11, 2005.

3 2. Federal Rule of Appellate Procedure ("FRAP") 10(e)(1) states, "[i]f any
4 difference arises about whether the record truly discloses what occurred in the district court, the
5 difference must be submitted to and settled by that court and the record conformed accordingly."

6 3. FRAP 10(e)(2) states, "[i]f anything material to either party is omitted from or
7 misstated in the record by error or accident, the omission or misstatement may be corrected and a
8 supplemental record may be certified and forwarded: (A) on stipulation of the parties; by the
9 district court before or after the record has been forwarded; or (C) by the court of appeals."

10 4. On October 24, 2003 the parties appeared before this Court for case management
11 conference ("Conference").

12 5. At the Conference, defendant's counsel made a statement that was attributed to
13 the Court. In the original transcript (attached as Exhibit A) dated October 24 at 13:24 to 14:2,
14 the Court was quoted as stating:

15 The Court: Well, this is a third party the Association of American
16 Railroads have brought. This is totally unrelated to what this suit is about, not
17 likely to lead to discovery. This is a fishing expedition.

18 6. By letter dated November 7, 2003, plaintiffs' counsel brought the mistake to
19 defense counsel's attention. (Attached as Exhibit B.)

20 7. By letter dated November 10, 2003 the Court Reporter submitted corrected
21 portions of the transcript to the Clerk. (Attached as Exhibit C.) The correction made is as
22 follows:

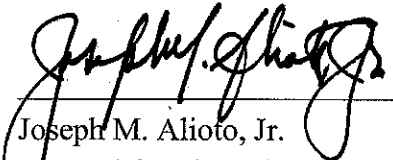
23 The Court: Well –

24 Mr. Cross: This is a third party the Association of American Railroads
25 have brought. This is totally unrelated to what this suit is about, not likely to lead
26 to discovery. This is a fishing expedition.

1 8. By letter dated November 11, 2003, defendant's counsel verified that the text
2 attributed to the Court in the transcript was in fact a statement made by defendant's counsel.
3 (Attached as Exhibit D.)
4

5 Dated: August 26, 2005


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7 
8 Joseph M. Alioto, Jr.
9 Counsel for Plaintiffs
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11 IT IS HEREBY ORDERED THAT, in order to present a clean and conformed record on
12 appeal, the corrections identified herein shall be made part of the official and original transcript
13 of the October 24, 2003 conference, with the corrected language substituted directly into the
14 original transcript before being forwarded to the Court of Appeals.
15

16 IT IS SO ORDERED.

17 September 1
18 Dated: ~~August~~ _____, 2005
19

20 
21 Jeffrey S. White
22 UNITED STATES DISTRICT JUDGE
23
24 by the Hon. Phyllis J. Hamilton
25
26
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